

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

PHILIP COLON, JR., :  
 :  
 Plaintiff, :  
 :  
 V. : CASE NO. 3:99CV1597 (RNC)  
 :  
 WILLIAM J. HENDERSON, :  
 POSTMASTER GENERAL, :  
 :  
 Defendant. :

RULING AND ORDER

Plaintiff, an employee of the U.S. Postal Service, brings this employment discrimination case under Title VII and the Rehabilitation Act. Defendant seeks summary judgment based on plaintiff's failure to file this action within 90 days of his receipt of the Postal Service's final agency decision denying his administrative complaint. See 29 C.F.R. § 1614.407(a).<sup>1</sup> The Postal Service's decision,<sup>2</sup> was received by plaintiff's then-counsel on August 14, 1998. See Pl.'s Mem. In Opp. To Summ. J. at 2 (stating that decision was "received by plaintiff 8-14-98"). This action was filed more than a year later. Plaintiff opposes summary judgment on the grounds that he complied with the 90-day filing deadline, or should be excused if he failed to do so, because he commenced an action in state court on July 17, 1998,

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<sup>1</sup> A federal employee may bring suit under Title VII and the Rehabilitation Act within 90 days of receipt of a final agency decision denying an administrative complaint. See 42 U.S.C. § 2000e-16 (Title VII); 29 U.S.C. § 794a(a)(1)(Rehabilitation Act).

<sup>2</sup> See Greany Affidavit, Ex. E, at 6-7 (final agency decision in USPS No. 4B-060-0085-97).

several weeks before the Postal Service's decision was issued. The state court complaint sought enforcement of an order issued by the Connecticut Commission on Human Rights and Opportunities awarding the plaintiff damages against the Postal Service under state law. See Pl.'s Mem. Of Law In Opp. To Summ. J. at 6, 8; see also Pl.'s Rule 9(c)(2) Statement, Ex. A (state court complaint filed 7/17/98). The CHRO order, which was in the nature of a default judgment, was invalid because the CHRO lacked jurisdiction over the plaintiff's claims. I conclude that plaintiff is not entitled to equitable tolling based on the filing of the state court complaint and that this action is therefore time-barred.

"The running of a statute of limitations can be equitably tolled when through no fault of his own the plaintiff was unable to sue within the limitations period but he sued as soon as he could." Elmore v. Henderson, 227 F.3d 1009, 1013 (7<sup>th</sup> Cir. 2000). Consistent with this precept, a plaintiff suing under Title VII may be entitled to equitable tolling if he has "raised the precise statutory claim in issue but has mistakenly done so in the wrong forum." Smith v. American President Lines, Ltd., 571 F.2d 102, 109 (2d Cir. 1978).

Plaintiff's failure to comply with the 90-day limit cannot be excused on this basis. His state court complaint seeking enforcement of the CHRO's order did not encompass the Title VII and Rehabilitation Act claims raised here; it involved alleged

violations of the Connecticut Fair Employment Practices Act only. Moreover, before the 90-day period for bringing this federal action began to run, plaintiff received a letter from the CHRO dated July 30, 1998, belatedly acknowledging that it lacked jurisdiction over his discrimination complaints (a point the Postal Service had been urging from the outset of the CHRO proceeding). See Def.'s Mem. of Law [doc 30], Ex. C. The letter informed the plaintiff that the CHRO would not be petitioning the state court for enforcement of its invalid order, and that he, like other federal employees, was required to proceed under Title VII. Having been so informed, plaintiff has no excuse for failing to commence this action within 90 days of his subsequent receipt of the Postal Service's decision rejecting his claims.

Accordingly, defendant's motion for summary judgment is hereby granted. The complaint is dismissed. The Clerk may close the file.

It is so ordered this 21<sup>st</sup> day of September 2001.

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Robert N. Chatigny  
United States District Judge